IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs May 15, 2007

STATE OF TENNESSEE v. KORBYN ORDWAY

Appeal from the Circuit Court for Lawrence County
No. 24284 Jim T. Hamilton, Judge

No. M2006-02048-CCA-R3-CD - Filed July 27, 2007

In August 2003, a Lawrence County grand jury indicted the defendant, Korbyn Ordway, with one count of first degree murder. In November 2004, following a jury trial in Lawrence County Circuit Court, the defendant was convicted on the sole count of the indictment and sentenced to life in prison without the possibility of parole. On appeal, the defendant claims that the evidence produced at trial was insufficient to support his conviction, that the trial court erred in denying a change of venue, that the defendant's right to a fair trial was tainted by the jury's viewing the defendant in handcuffs, and that the trial court erred in allowing the state's expert witness to refuse to answer questions concerning his qualifications. After reviewing the record, we conclude that there is no error in the judgment of the trial court and therefore affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and ROBERT W. WEDEMEYER, JJ., joined.

J. Daniel Freemon, Lawrenceburg, Tennessee, for the appellant, Korbyn Ordway.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; T. Michel Bottoms, District Attorney General; James G. White, II, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At trial, Betty Lyles testified that on the afternoon of Thursday, August 21, 2003, her daughter, Beverly Lyles Ordway, who had been divorced from the defendant for about a year at the time, came to the house she (Ms. Lyles) and her husband James shared. Beverly picked up her five-year-old daughter, D.O., and took her home. According to Ms. Lyles, Mr. Lyles, who was retired, would look after D.O. during the day while Beverly was at work. That night, Ms. Lyles was on the telephone with Beverly when Beverly told her mother that she had to hang up because she had someone named Belew on the phone. According to Ms. Lyles, "Belew" was a man, Tim Belew; at

the time, Ms. Lyles had not met Belew and only knew that he was her daughter's friend. This was the last time Ms. Lyles spoke to her daughter.

The next day, Ms. Lyles became concerned when her husband informed her that Beverly had not brought D.O. to the Lyles residence and that a phone call Mr. Lyles placed to her daughter's house went unanswered. On Saturday morning, Ms. Lyles drove by her daughter's house and noticed that Beverly's car, a black Honda, was not parked at the residence. That afternoon, Ms. Lyles received a call from Beverly's employer, who notified her that Beverly had not shown up for work the past two days. At that point, Mr. and Mrs. Lyles went to their daughter's house, for which they had keys. After unlocking both the doorknob and deadbolt locks, Mr. and Mrs. Lyles entered the house, with Ms. Lyles noting that the house was "extremely cold," and that it was "very unusual for Beverly to have her house this cold." After searching the house, Mr. Lyles discovered his daughter lying dead in an empty bathtub.

Mr. Lyles's testimony mirrored that of his wife. Like her husband, Mr. Lyles stated that he had no knowledge of any relationship between his daughter and Belew prior to Beverly's death. Mr. Lyles testified that on one occasion, he heard D.O. tell her grandmother that the defendant had hit her mother.

Alice Cheryell, the defendant's aunt, testified that on Monday, two days after Beverly Ordway was discovered dead, the defendant contacted her. Cheryell asked the defendant if he killed his wife, to which the defendant replied, "She's dead, ain't she?" Cheryell claims the defendant told her that in the week leading up to the victim's death, he, his ex-wife, and their children had acted like a family, but that he had experienced a "discharge" during the week, which led the defendant to believe that he had contracted a sexually transmitted disease (STD) and that his ex-wife was "still messing around on him." In light of these suspicions, the defendant pretended to leave his ex-wife's apartment but instead hid under her bed, where he overheard a telephone conversation between his ex-wife and an unknown man. After the call ended, the defendant came out from under the bed and confronted his ex-wife. After a while, the defendant told his aunt, he "snapped," and that "before he knew it he had hit her four or five times in the face, and then he had choked her until foam c[a]me out of her mouth, and then he dragged her to the bathroom and drowned her in the tub." After that, "he got the baby [D.O.] and left." The two then arranged to meet each other in a Wal-Mart parking lot in Paducah, Kentucky. At that meeting, the defendant arrived driving a black Honda with his daughter in the back seat. The defendant gave his daughter to his aunt, and he then turned himself in to police. On cross-examination, Cheryell admitted that during the conversation, the defendant did not state that he intended to kill his ex-wife.

Belew testified that he had met the victim while the two worked together at Inner City Products in Lewisburg. At first, the two were simply friends, but the nature of their relationship changed after the victim's divorce from the defendant. Belew said he and the victim went on a few dates, and that on the Monday before her death, he and the victim had sexual intercourse. Belew estimated that he and the victim had intercourse two or three times before the victim's death. The night before the victim was found dead, she and Belew had a two-hour long conversation, some of

which involved a discussion of sex. Belew estimated that he was on the phone with the victim for about an hour after their conversation about sex ended. The Sunday after the victim's death, Belew received a telephone call from the defendant. According to Belew, the substance of the conversation was as follows:

> DEFENDANT: You the man, ain't you.
>
> BELEW: No, I ain't the man.
>
> DEFENDANT: Yeah you the man.
>
> BELEW: No, I don't want to be the man. Who is this?
>
> DEFENDANT: You know who it is. How she going to be with you on Monday and be with me on Tuesday and then tell you on the phone you the best she ever been with?
>
> BELEW: What was you doing, standing outside the window listening?
>
> DEFENDANT: No, I's in the house, she didn't know it.
>
> BELEW: Well, why did you have to do her like that?
>
> DEFENDANT: Do her like what?
>
> BELEW: You know what you did
>
> DEFENDANT: No, you scared to speak on it?
>
> BELEW: Why'd you have to kill her?
>
> DEFENDANT: It was something to do and you next.

On cross-examination, Belew stated that on one occasion, the victim told him that the defendant had bitten her on the ear after an argument.

Charles Harlan, a forensic pathologist, testified over objection of defense counsel[1] that he conducted the autopsy of the victim's body. Dr. Harlan testified that while the victim had received facial injuries consistent with a blow to the face, the injuries amounted to little more than a black eye. Instead, the pathologist listed the cause of death as drowning. Although the defendant did not

[1] The substance of the defendant's objection regarding this expert's qualifications will be detailed in a later section.

have water in her lungs, Dr. Harlan testified that eighty percent of all drowning victims do not have water in their lungs upon autopsy. Dr. Harlan testified that the victim's pulmonary congestion and edema, coupled with acute passage congestion of the victim's liver and spleen led him to conclude that the victim died as a result of drowning. Dr. Harlan also testified that there were no signs that the victim had been strangled. He also noted that cool temperatures could slow the rate of a body's decomposition.

Officer Parker Hardee of the Lawrenceburg Police Department testified that he was one of the officers who was dispatched to the victim's apartment on Saturday, August 23, 2003. Hardee photographed and videotaped the crime scene, and he also lifted a fingerprint from the bathtub where the victim was found. On cross-examination, Officer Hardee noted that the bathtub was wet but there was no standing water in the tub. Special Agent Oakley McKinney, a forensic scientist with the Tennessee Bureau of Investigation (TBI), testified that his test of the fingerprint revealed that it belonged to the defendant.

Sergeant Samuel McConnell with the Lawrenceburg Police Department testified that when he first entered the victim's residence, he noticed that the temperature was very cold. Once he arrived in the victim's bathroom, he noticed the victim lying in the tub. According to Sergeant McConnell, the victim's clothing and hair were wet, and the lever used to close the tub's drain was in the up position, which led him to conclude that the tub had been filled with water at some point. He also observed smear marks on the tub which led him to believe that a body had been placed in the tub. He also noticed blood on a towel hanging on a curtain rod and blood on the right side of the victim's face. He also noted an area of pooled blood in the victim's bedroom, which led Sergeant McConnell to believe that the victim had lain there bleeding for a period of time. He also testified that there was blood on the bed, that the bed had been shoved, and that a night stand had knocked a hole in the wall. Sergeant McConnell testified that Lawrenceburg Police officers found the defendant's car parked three blocks away from the victim's residence.

Sergeant McConnell testified that he was part of the law enforcement contingent that arrested the defendant in Kentucky. After his arrest, the defendant signed a Miranda waiver and gave a voluntary statement. In his statement, the defendant admitted to hitting the victim three or four times but when asked if he killed the victim, his response was "I don't know that." A search of the Honda automobile in which the defendant was apprehended revealed an address book containing an entry for Belew, and the victim's credit cards, which had been used in Missouri, Nebraska, and Illinois between the date the victim was last seen alive and the date the defendant was apprehended.

Charles Hardy with the TBI testified that he performed DNA tests on several samples which had been provided him by police. These samples included carpet, a wall decoration, various papers, a jacket, blue jean shorts, a towel cutting, and material from a pillow. All samples tested positive for the victim's blood. On cross-examination, Agent Hardy testified that one of his colleagues performed a test on a rape kit conducted on the victim, and that a vaginal swab taken as part of the rape kit tested positive for spermatozoa. However, there was no indication as to whom the sperm belonged.

The defendant did not testify on his own behalf and presented only two witnesses. One of the defendant's witnesses, Al Lamon Jones, testified that the defendant was involved in a sexual relationship with the victim in the two months leading to her death. The other defense witness was the Lawrence County Clerk and Master, Christy Gain, who testified that the divorce between the defendant and the victim was finalized on May 23, 2003.

ANALYSIS

Sufficiency of Evidence

An appellate court's standard of review when the defendant questions the sufficiency of the evidence on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979) (emphasis in original). The appellate court does not reweigh the evidence; rather, it presumes that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the state. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Questions regarding witness credibility, conflicts in testimony, and the weight and value to be given to evidence were resolved by the jury. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). A guilty verdict removes the presumption of innocence and replaces it with a presumption of guilt, and on appeal the defendant has the burden of illustrating why the evidence is insufficient to support the jury's verdict. Id.; State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The defendant argues that the state did not sufficiently prove that he murdered the victim with premeditation. The defendant was charged and convicted of killing the victim "unlawfully, intentionally, and with premeditation" in violation of Tennessee Code Annotated section 39-13-202(a)(1). That statute explains:

> "[P]remeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Tenn. Code Ann. § 39-13-202(d) (2003). The presence of premeditation is a question for the jury and may be established by proof of the circumstances surrounding the killing. State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997). Our supreme court has noted the following factors that demonstrate the existence of premeditation: the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, declarations by the defendant of an intent to kill, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, and calmness immediately

after the killing. Id. Additional factors cited by this court from which a jury may infer premeditation include "planning activities by the appellant prior to the killing, the appellant's prior relationship with the victim, and the nature of the killing." State v. Halake, 102 S.W.2d 661, 668 (Tenn. Crim. App. 2001) (citing State v. Gentry, 881 S.W.2d 1, 4-5 (Tenn. Crim. App. 1993)). Furthermore, "[e]vidence that a defendant lay in wait for a victim is strong evidence of premeditation." Id. at 669 (citing State v. Bullington, 532 S.W.2d 556) (Tenn. 1976)). Without sufficient evidence of premeditation, a homicide in Tennessee is presumed to be second degree murder. State v. Brown, 836 S.W.2d 530, 543 (Tenn. 1992).

In this case, the evidence of premeditation is far from overwhelming, but our supreme court has held that evidence of premeditation that is "far from overwhelming" can still be "legally sufficient to support the jury's verdict." State v. Keough, 18 S.W.3d 175, 1181 (Tenn. 2000). The jury heard two persons, Cheryell and Belew, testify that the defendant described how he had hidden in the victim's home and listened to the victim speaking to Belew before killing the victim. According to Belew, he talked with the victim for an hour after their conversation about sex ended. Cheryell testified that the defendant admitted that his suspicions about his ex-wife's infidelity were aroused when he experienced a "discharge" earlier in the week, and Belew testified that the defendant told him that he was "next" to die. Additionally, the police located the defendant's car three blocks away from the victim's residence, and before the defendant left the victim's residence, he set the air conditioner to the lowest possible temperature and locked both locks on the front door. The defendant claims that he became filled with passion upon hearing that his ex-wife was having sexual relations with another man, but the jury chose to discount this evidence. Furthermore, we note that "[a] killing committed during a state of passion . . . may still rise to the level of first degree murder if the State can prove that premeditation . . . preceded the struggle." State v. Hall, 8 S.W.3d 593, 600 (Tenn. 1999). We conclude that the evidence produced at trial, which on appeal we must view in the light most favorable to the state, was sufficient for a rational jury to find beyond a reasonable doubt that the defendant acted with premeditation in killing the victim. Therefore, the defendant's claim is without merit.

Change of Venue

The defendant contends that the trial court erred by refusing to change the venue of the trial because of adverse pretrial publicity, and the defendant also raises issue with the lack of racial diversity amongst the jury panel. We conclude that the evidence does not support the defendant's claims.

A change of venue may be granted if it appears that "due to undue excitement against the defendant in the county where the offense was committed or any other cause, a fair trial probably could not be had." Tenn. R. Crim. P. 21(a). A motion for change of venue is left to the sound discretion of the trial court, and the court's ruling will be reversed on appeal only upon a clear showing of an abuse of that discretion. State v. Howell, 868 S.W.2d 238, 249 (Tenn.1993); State

v. Hoover, 594 S.W.2d 743, 746 (Tenn. Crim. App. 1979). Prejudice will not be presumed on the mere showing of extensive pretrial publicity, State v. Stapleton, 638 S.W.2d 850, 856 (Tenn. Crim. App. 1982), and the mere fact that jurors have been exposed to pretrial publicity will not warrant a change of venue, State v. Mann, 959 S.W.2d 503, 531-32 (Tenn.1997). Instead, the test is whether the jurors who actually sat on the panel and rendered the verdict and sentence were prejudiced by the pretrial publicity. State v. Crenshaw, 64 S.W.3d 374, 386 (Tenn. Crim. App. 2001); State v. Kyger, 787 S.W.2d 13, 18-19 (Tenn. Crim. App. 1989). Jurors who have been exposed to pretrial publicity may sit on the panel if they can demonstrate to the trial court that they can put aside what they have heard and decide the case on the evidence presented at trial. State v. Gray, 960 S.W.2d 598, 608 (Tenn. Crim. App. 1997).

In State v. Hoover, 594 S.W.2d 743 (Tenn. Crim. App. 1979), this court set forth the factors which should be considered to determine whether a change of venue is warranted. The Hoover court listed the following seventeen factors: the nature, extent, and timing of pretrial publicity; the nature of the publicity as fair or inflammatory; the particular content of the publicity; the degree to which the publicity complained of has permeated the area from which the venire is drawn; the degree to which the publicity circulated outside the area from which the venire is drawn; the time elapsed from the release of the publicity until the trial; the degree of care exercised in the selection of the jury; the ease or difficulty in selecting the jury; the venire person's familiarity with the publicity and its effect, if any, upon them as shown through their answers on voir dire; the defendant's utilization of his peremptory challenges; the defendant's utilization of challenges for cause; the participation by police or by prosecution in the release of the publicity; the severity of the offense charged; the absence or presence of threats, demonstrations or other hostility against the defendant; the size of the area from which the venire is drawn; affidavits, hearsay or opinion testimony of witnesses; and the nature of the verdict returned by the trial jury. Hoover, 594 S.W.2d at 746 (citation omitted). Again, however, for there to be a reversal of a conviction based upon a claim that the trial court improperly denied a motion for a change of venue, the "defendant must demonstrate that the jurors who actually sat were biased or prejudiced against him." State v. Evans, 838 S.W.2d 185, 192 (Tenn. 1992).

The defendant claims that the change of venue motion should have been granted due to extensive pretrial publicity. However, the record does not speak to the nature, timing, or extent of the alleged publicity. Few of the specific jurors with whom the defendant raises issue appear to have mentioned reading about the case in the newspaper or on the Internet or seeing about it on television. Janet Slatter, who was not on the final jury, alluded to some pretrial publicity, but she stated that she could presume the defendant's innocence regardless of the publicity. Another of the disputed jurors, Michael White, went so far as to say that he knew nothing about the case because he "seldom" read a newspaper. Absent any proof that pretrial publicity prejudiced the jury, this claim is without merit.

The defendant also raises issues with several of the jurors for various reasons. The defendant claims that Slatter revealed a degree of prejudice during voir dire; however, Slatter was not on the final jury, as the defendant used a peremptory challenge against her. The defendant claims that juror Dorothy Dial exhibited prejudice because she was a friend of the victim's family and stated that she

would require proof to overcome her preconceived notions about the case, but the defendant mischaracterizes this juror's attitude. Dial testified that she knew some of the family but was not close friends with them, and she noted that she could be fair to both sides and could weigh the proof fairly despite having a passing acquaintance with family members. Furthermore, Dial specifically stated that she understood that the defendant was innocent until proven guilty and that she would not require proof of the defendant's innocence. The defendant claims that juror Wayne Allen was prejudiced because he went to school with the victim's brother and because his wife worked with the victim, but Allen stated that he did not know the victim, had no idea who killed her, and that he knew that the defendant was innocent until proven guilty. The defendant also did not attempt to challenge Allen for cause. Finally, while juror White worked with the victim's boyfriend, nothing indicates that White ever spoke with Belew about the case or about Belew's relationship with the victim. Like Allen, defendant did not challenge White for cause. In short, the record does not indicate that any of these jurors had any prejudice against the defendant. Thus, this claim is without merit.

Finally, the defendant claims that he was prejudiced by the lack of African Americans in the jury pool. However, this assertion is not supported by the record. At trial, the defendant did not disagree with the trial court that the racial diversity of the jury pool was the same or better than that of the county at large. As such, this claim is without merit.

Prejudice Due to Jury's Viewing Defendant in Handcuffs

The defendant contends that he was unduly prejudiced by the jury's viewing him in handcuffs. We disagree.

Due process requires that the accused in a criminal case be afforded the "physical indicia of innocence." Kennedy v. Cardwell, 487 F.2d 101, 104 (6th Cir. 1973). The use of shackles during a trial, for example, has been specifically condemned absent certain safeguards (such as curative jury instructions) designed to assure that it would not influence the issue of innocence or guilt. Willocks v. State, 546 S.W.2d 819, 822 (Tenn. Crim. App. 1976); State v. Smith, 639 S.W.2d 677, 681 (Tenn. Crim. App. 1982). However, if a challenged practice is not inherently prejudicial and the defendant fails to show actual prejudice, the defendant's complaint must fail. Holbrook v. Flynn, 475 U.S. 560, 106 S. Ct. 1340, 1347-48 (1986); Carroll v. State, 532 S.W.2d 934, 936 (Tenn. Crim. App. 1975).

In this case, the record contains little evidence to support the defendant's contention that the jurors actually saw the defendant wearing handcuffs, and what evidence does exists reveals that the jury was not unduly prejudiced by the sight of the defendant in handcuffs. The defendant, in his brief, contends that at some point prior to trial, he raised an objection during an in-chamber conference and that the court provided a ruling on this objection, but this objection and the resulting conference does not appear in the record. The conference is alluded to during voir dire of the jury

panel by the defendant, but a transcript of the voir dire does not reveal which jurors may have been present at the time and whether any members of the panel who may have seen the defendant in handcuffs actually served on the jury. When asked if they had seen the defendant wearing handcuffs, an indeterminate number of the venire raised their hand. The defendant's attorney asked two of these individuals about the incident, and both responded that seeing the defendant in handcuffs had no effect on them. The defendant points to the testimony of Sheriff William Dorning at the hearing on the defendant's motion for a new trial, in which the sheriff states that he has, in the past, brought certain defendants into the courtroom wearing shackles. However, Sheriff Dorning could not state with any certainty whether this practice took place in the defendant's trial. In short, the defendant has failed to demonstrate that any alleged incident involving his appearance before a potential juror while handcuffed resulted in any prejudice to him. As such, this issue is without merit.

Expert Witness's Qualifications

The defendant claims that the trial court erred in allowing Dr. Harlan, who performed the autopsy, to testify as an expert witness because the court did not allow the defendant to conduct a proper voir dire concerning Dr. Harlan's qualifications. At trial, Dr. Harlan testified that he received his medical license in 1972 and at the time of his testimony he was an assistant medical examiner and consulting forensic pathologist for Lawrence County. He stated that he was certified by the American Board of Pathology in the areas of anatomic, clinical, and forensic pathology. Dr. Harlan also testified that he formerly worked for the Shelby County Medical Examiner's office, served as the medical examiner for "multiple counties in Middle Tennessee," including Lawrence County, after moving to Nashville in 1983, and served as Chief Medical Examiner for the State of Tennessee between 1989 and 1995. Defense counsel then asked Dr. Harlan questions about a pending investigation with the state medical board. Dr. Harlan admitted that he was under investigation, but he refused to answer questions regarding the nature of the investigation on the advice of counsel. Dr. Harlan did state that at the time of the trial, his medical license had not been suspended and that he was not on probation. At the conclusion of the defendant's voir dire, the trial court ruled that Dr. Harlan was qualified as an expert, stating, "I've had Dr. Harlan in court more times than I can count over the last 23 years."

Following its investigation, the Board of Medical Examiners of the Tennessee Department of Health concluded that Dr. Harlan had made incorrect or irregular findings in nineteen autopsies that he had performed between January 1995 and April 2002. In light of these and other violations, the Board permanently revoked Dr. Harlan's license in May 2005. Dr. Harlan admitted to these findings in the May 2006 hearing on the defendant's motion for a new trial.[2] In light of these facts, the defendant claims that Dr. Harlan was not qualified to testify as an expert witness at trial. The

[2] At the motion for new trial hearing, Dr. Harlan stated that he appealed the Board's findings to the Davidson County Chancery Court, and that his appeal was pending at the time of the new trial hearing. The record is unclear as to the resolution of this appeal.

defendant claims that the trial court should have required Dr. Harlan to testify to the issues which ultimately led to his license being revoked, and that the trial court's failure to require Dr. Harlan to answer these questions resulted in an arbitrary qualification of the physician as an expert witness. In the defendant's view, this "arbitrary qualification" constitutes an abuse of discretion. We disagree.

Questions regarding the admissibility, qualifications, relevancy and competency of expert testimony are left to the discretion of the trial court. McDaniel v. CSX Transp., Inc., 955 S.W.2d 257, 263-264 (Tenn. 1997). Pursuant to Rule 702 of the Tennessee Rules of Evidence, an expert may testify "in the form of an opinion or otherwise," when the "scientific, technical, or other specialized knowledge" offered by the witness will substantially assist the trier of fact. Rule 703 of the Tennessee Rules Evidence requires the expert's opinion to be supported by trustworthy facts or data "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject." The determining factor is "whether the witness's qualifications authorize him or her to give an informed opinion on the subject at issue." State v. Stevens, 78 S.W.3d 817, 834 (Tenn. 2002). A trial court's ruling on the admissibility of such evidence may be overturned on appeal only if the discretion is exercised arbitrarily or abused. Id. at 832.

In this case, Dr. Harlan testified as to his academic training and professional work history and stated that his license was not under suspension at the time of trial. Although the trial court was not aware of the nature of the allegations against Dr. Harlan, the physician did admit that he was the subject of an investigation by the state medical board. The court considered this evidence along with the other evidence regarding Dr. Harlan's qualifications and ruled that the physician was qualified as an expert witness. Such a ruling was within the trial court's discretion. Additionally, the trial court instructed the jury that "as with any other witness, it is up to you to decide whether you believe this [expert] testimony," that the jury was to "decide whether the witness['s] opinion [was] based on sound reasons and sound judgment and information," and that the jury was "to give the testimony on an expert witness such weight and value as you think it deserve[d] along with all the other evidence in this case." The jury evidently chose to accredit the expert's testimony. Therefore, the defendant is not entitled to relief on this issue.

CONCLUSION

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

D. KELLY THOMAS, JR., JUDGE